

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AL JAVIER,

Plaintiff,

-against-

ANTHONY RUSSO, et al.,

Defendants.

21-CV-7097 (LTS)

ORDER

LAURA TAYLOR SWAIN, United States District Judge:

Plaintiff, who is currently incarcerated in Green Haven Correctional Facility, filed this action *pro se*. By order dated September 17, 2021, the Court directed Plaintiff to amend his complaint to cure its deficiencies and granted him 60 days' leave to do so. On November 23, 2021, not having received an amended complaint within the time allowed, the Court entered an order and judgment dismissing the action. (ECF 7-8.)

On December 2, 2021, the Court received Plaintiff's amended complaint, which he had signed on November 12, 2021, and which states that it was given to prison officials for mailing on the same date. (ECF 9.) Under the "prison mailbox rule," a prisoner's pleading is deemed filed on the date that he gives it to prison officials for mailing. *See Walker v. Jastremski*, 430 F.3d 560, 562-64 (2d Cir. 2005).

On December 16, 2021, the Court received Plaintiff's letter regarding the order of dismissal. (ECF 10.) The Court liberally construes this submission as a motion, under Rule 60(b) of the Federal Rules of Civil Procedure, for relief from a judgment or order. After reviewing the arguments in Plaintiff's submission, because it appears that the amended complaint was timely filed under the prison mailbox rule, the Court (1) grants the motion for reconsideration and (2) directs the Clerk of Court to vacate the order of dismissal and judgment (ECF Nos. 7-8), and

reopen this matter. Once this matter is reopened, the Court will screen the amended complaint under 28 U.S.C. § 1915A.

CONCLUSION

Accordingly, Plaintiff's motion for reconsideration (ECF 10) is granted. The Court directs the Clerk of Court to vacate the order of dismissal and judgment (ECF Nos. 7-8), and reopen this matter.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962). The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket.

SO ORDERED.

Dated: January 25, 2022
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge